

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MICHAEL McCLEARY, PAT CARIK )  
and LINDA NEUDECKER, as heirs of )  
June McCleary, deceased, )

Plaintiffs, )

vs. )

Case No. 01-0839-CV-W-3-ECF

DAIMLERCHRYSLER CORPORATION )  
and KEITH McCLEARY, )

Defendants. )

ORDER GRANTING PLAINTIFFS' MOTION TO REMAND

Pending is Plaintiffs' Motion to Remand. The Court concludes that subject matter jurisdiction is lacking in this case, so the motion (Doc. # 5) is granted, and the case is remanded to the Circuit Court of Jackson County, Missouri.

This case arose from an automobile accident that resulted in the death of June McLeary. Her husband, Defendant Keith McLeary, was driving the Dodge Caravan in which Ms. McLeary was a passenger. Ms. McLeary's children are the plaintiffs in this case; their petition asserts eight causes of action, seven of which are directed to DaimlerChrysler Corporation ("Chrysler"). Count VII asserts a claim for negligence against Mr. McLeary.

As the Petition is drafted, federal jurisdiction is lacking; none of the claims arise under federal law, and diversity of citizenship is lacking. Defendant Chrysler contends that Mr. McLeary must be realigned as a plaintiff in this action, which would create the necessary diversity of citizenship. The Court disagrees.

"Diversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who defendants. It is our duty, as it is that of the lower federal courts, to look beyond the pleadings, and arrange the parties according to their sides in the dispute." Indianapolis v. Chase Nat'l Bank, 314 U.S. 63, 69 (1941) (quotation omitted). Thus, where there is no controversy between the purported plaintiff and defendant, realignment is proper. E.g., Dryden v. Dryden, 265 F.2d 870, 874 (8<sup>th</sup> Cir. 1959); see also Hallmark Prod. v. Mosley, 190 F.2d 904, 908 (8<sup>th</sup> Cir. 1951). These

cases (particularly the former two) suggest that the need to realign grows from the need to satisfy the Constitutional requirement of an actual case or controversy between the parties. However, where there are legitimate differences between the parties there is no need to realign the parties. See American Motorist Ins. Co. v. Trane Co., 657 F.2d 146, 151 (7<sup>th</sup> Cir. 1981) (“Realignment is proper where there is no actual, substantial conflict between the parties that would justify placing them on opposite sides of the lawsuit.”).

Chrysler focuses upon the fact that Mr. McLeary is included, along with the current plaintiffs, as a “tier one” beneficiary under Missouri’s wrongful death statute. Mo. Rev. Stat. § 537.080.1. Thus, he is entitled to share in any recovery made under the wrongful death statute. However, Chrysler minimizes the effect of Count VII, wherein the children assert a claim against Mr. McLeary, and in so doing distorts the true nature of the parties’ relationship; specifically, the fact that the children are legitimately opposed to Mr. McLeary on some issues and potentially aligned with him on others. This presented the children with two options: (1) name their father as a defendant leaving him (if he chooses) to assert a crossclaim against Chrysler or pursue some other means of recovering under the wrongful death statute, or (2) include their father as a co-plaintiff, then assert a crossclaim against him. Both would have been procedurally proper, and neither is constitutionally compelled. Plaintiffs are the master of their Complaint, and they chose one of two legitimate methods for advancing this litigation. The Court sees no justification for interfering with that choice and realigning the parties based on the possibility of future events. Cf. American Motorist Ins., 657 F.2d at 149 (“facts which form the basis for realignment must have been in existence at the time the action was commenced.”).

The Motion to Remand is granted, and the case is remanded to the Circuit Court for Jackson County, Missouri.

IT IS SO ORDERED.

DATE: October 17, 2001

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT